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3 **UNITED STATES DISTRICT COURT**
4 **SOUTHERN DISTRICT OF CALIFORNIA**
5

6 DONALD STURGEN,

7 Plaintiff,

8 vs.

9 JONES RETAIL CORPORATION,

10 Defendant.

CASE NO. 09cv507 WQH (WVG)

ORDER

11 HAYES, Judge:

12 The matter before the Court is Defendant's Motion to Stay Temporarily. (Doc. # 21).

13 **BACKGROUND**

14 Plaintiff filed a class action suit against Defendant in the Superior Court of California,
15 San Diego Division alleging Defendant's stores had requested personal information from
16 customers during retail transactions in violation of California Civil Code § 1747.08. (*See* Doc.
17 # 1). On March 13, 2009, Defendant removed the case to this Court. (Doc. # 1). On July 20,
18 2009, Defendant filed a Motion to Stay Temporarily. (Doc. # 21). In the motion, Defendant
19 contends the case should be stayed pending the outcome of two appeals in the Court of Appeal
20 for the State of California which will address the issues of whether a zip code or an email
21 address are "personal identification information" pursuant to California Civil Code § 1747.08.
22 (Doc. # 21 at 1). Defendant explains that these decisions will determine the scope of the class.
23 (Doc. # 21 at 6). Defendant claims the cases will likely be decided in December, 2009 so a
24 stay would be brief. (Doc. # 21 at 3).

25 On August 3, 2009, the magistrate judge held a case management conference to plan
26 discovery. (Doc. # 26). The magistrate judge issued an order following the case management
27 conference which "directs that cross related discovery concerning address and telephone
28 number disclosure will proceed at this time, subject to the pending motion to stay, and the

1 interests of moving this portion of the matter forward and helping foster the case for possible
2 settlement discussions.” (Doc. # 27). In Plaintiff’s response, he concedes that the issues of
3 whether a zip code or an email address constitute “personal identification information”
4 pursuant to California Civil Code § 1774.08 will determine the scope of the class, but contends
5 “it is not necessary to stay this case in order to efficiently deal with the impact of these
6 claims.” (Doc. # 28 at 2). Plaintiff contends that the magistrate’s order, which currently limits
7 “class certification related discovery” to the “disclosure of addresses and telephone numbers”
8 is a better solution. (Doc. # 28 at 2). Plaintiff states that if the California Court of Appeal
9 rules email addresses or zip codes are “personal identification information” pursuant to §
10 1774.08, extending the deadlines for discovery would allow further discovery as to these
11 issues. (Doc. # 28 at 2).

12 ORDER

13 In determining whether a stay should be granted, courts consider (1) “the possible
14 damage that may result from the granting of a stay;” (2) “hardship or inequity that a party may
15 suffer if required to go forward;” and (3) “the orderly course of justice measured in terms of
16 the simplifying or complicating of issues, proof, and questions of law which could be expected
17 to result from a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005).

18 At this stage of the proceedings, Defendant has not established that it will suffer any
19 “hardship or inequity” if the case goes forward. Discovery is currently limited to potential
20 class members who could allege violations under settled California law on address and
21 telephone number disclosure. Staying the entire case to avoid an issue which has not yet arisen
22 will not benefit “the orderly course of justice” and will only create unnecessary delay.

23 IT IS HEREBY ORDERED Defendant’s Motion to Stay Temporarily (Doc. # 21) is
24 DENIED.

25 DATED: November 13, 2009

26 

27 WILLIAM Q. HAYES
28 United States District Judge